

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

____ Division

Robert Derek Lurch Jr.

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

-See Defendant Information-

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No.

22-cv-3948

(to be filled in by the Clerk's Office)

Jury Trial: (check one)

☒ Yes

☐ No



COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Defendant No. 3

Name

Job or Title (if known)

Address

OFFICER JOHN DOE WHO FAILED TO INTERVENE
IN THE PLAINTIFF BEING UNLAWFULLY SEIZED

City

State

Zip Code

County

Telephone Number

E-Mail Address (if known)



Individual capacity



Official capacity

Defendant No. 4

Name

Job or Title (if known)

Address

OFFICER JOHN DOE WHO UNLAWFULLY SEIZED
ME IN ORDER TO UNLAWFULLY EVICT ME

City

State

Zip Code

County

Telephone Number

E-Mail Address (if known)

(WHITE CAUCASIAN MALE, 5 FOOT 7 TO 5 FOOT
11)



Individual capacity



Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):



Federal officials (a *Bivens* claim)



State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

① UNLAWFUL SEIZURE (4th amendment violation)

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

-see actual claim - attached-

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

29-27 40th road / Long Island City, NY

- B. What date and approximate time did the events giving rise to your claim(s) occur?

May 16 - May 22 2021

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

-see attached-

Facts of the Incident

Between the dates of May 16, 2021 to May 22, 2021, I nonchalantly called a caseworker at my job program (Exodus) (Fairfield Inn Marriott/29-27 90th Rd./Long Island City, NY) an expletive and due to that she tried to call the police to get me removed unlawfully and forcefully from the program.

When the police arrived (in response to the first call) they heard Exodus and my side of the story then they asked to see the contract (explaining to Exodus that if I violated any terms and conditions that warrant removal according to the contract then they will have the legal authority to remove me from the premises).

However, after officers reviewed the contract, they informed Exodus personnel that they have to allow me to bring my stuff back upstairs and since I didn't violate the contract I can't be evicted.

Officers that responded to that call or the call after that had to escort me to my room because Exodus employees was reluctant to allow me to bring my personal belongings back upstairs that they disrespectfully threw on the floor of the hotel lobby (my belongings included thousands worth of clothes, my Lincoln Technical Institute school laptop and books and other valuable items as well).

Over the next few days I had to miss school because Exodus employees kept threatening me that once I leave they are not letting me back in the room and they are going to throw my

property out. as a result of their threat, I had to barricade myself in my room as Exodus continued to call police in an attempt to get me unlawfully evicted.

Up until the last call, every officer that responded informed Exodus Employees that since I wasn't in violation of the contract, I can't be evicted.

These employees even tried to fabricate a story that I now threatened one of them but officers did not believe them (that responded to the 4th or 5th call) because that wasn't told to all dispatchers and when they responded, I was still barricaded in my room (I utilized the manual lock to prevent them from entering).

On the last call, the officer viewed the contract but because Exodus employees pleaded with him to remove me (unlawfully), he told me I will have to leave or I will be arrested for trespassing (I subsequently left).

~~Unlawful~~ Seizure

claim

"to act under color of state law or authority for purpose of section 1983, the defendant must have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law" (Monsky v. Moraghan, 127 F.3d 243). "Generally, a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law" (West, 487 U.S. at 50). "Acts of officers in the ambit of their personal pursuits are plainly excluded" (Pitchell, 13 F.3d at 548).

A § 1983 claim against a private entity, however, must "allege facts demonstrating that the private entity acted in concert with the state actor to commit an unconstitutional act" (Botts v. Shearman, 751 F.3d 78). "Put differently, a private actor acts under color of state law when the private actor is a willful participant in joint activity with the state or its agents" (Id.).

"A merely conclusory allegation that a private entity acted in concert with a state actor does not suffice to state a § 1983 claim against the private entity" (Ciambriello, 292 F.3d at 324). "Rather, a plaintiff must allege that the private entity and state actors 'carried out a deliberate, previously agreed upon plan,' or that their activity 'constituted a conspiracy or meeting of the minds' (Johnson v. City of New York, 669 F. Supp.2d 414).

Now on the day of the incident, Exodus Employees called 911 and when the officers arrived they were informed that the Plaintiff was barricaded in his room and would not leave.

When officers investigated this call, they did so by knocking on the room door that the Plaintiff occupied and when the Plaintiff open the door they asked the Plaintiff, why he is not complying with the Exodus staff orders.

Once the Plaintiff informed the officers that according to the rules of the contract he signed with Exodus, they have no grounds to terminate the agreement that enables him to stay, the officers then asked to see the contract.

After reviewing the terms and conditions and determining that the Plaintiff was not in violation of these rules, the Caucasian officer suggested after they pleaded with him to remove the Plaintiff that if they state I threatened them, he has no choice but to remove me.

An Exodus employee then stated he threatened me and the officer that orchestrated the anticipated subsequent events approached me stating I have to leave because I threatened the staff.

I then informed the officer that they cant do that because the 911 call did not say I threatened anyone and I was in my room with the door closed when yall arrived, "yall cant do that" I stated.

The Caucasian officer that was part of the duo then said your not telling us what we can do, you leave or be arrested for criminal trespassing. I then left not to violate my parole

stipulations (I can't get arrested or my parole would be violated).

Now once the officer suggested a way to the Exodus staff to help them meet a certain criteria in order to give the police the authority to arrest me or remove me from the property, the meeting of the minds standard was satisfied and this private entity acted in concert with these state actors (the NYPD) to violate my right against unlawful seizures, which the act in itself turns them in to state actors.

Therefore, on the day of the incident my right against unlawful seizures was violated because I was not in violation of the contract that allowed me to occupy the living quarters I was in and I was still removed unlawfully.

Under the color of their authority while acting in concert with the Exodus staff, officers seized me in my living quarters and demanded I leave or face criminal prosecution.

Parties Liable: ① Exodus staff member who called 911 and the ones who assisted ② John Doe officer who unlawfully seized me.

③ John Doe officer who failed to intervene in the plaintiff being unlawfully seized

Breach of contract

claim

ON February 5, 2021 I was released From Rikers Island and contacted Exodus transitional services (jail to jobs program) in regards to reenrolling in their housing/job Readiness program (I was enrolled previously at the 113-10 Horace Harding expressway Location [Corona, Queens]).

I was told by a representative of Exodus to come to the Fairfield Inn Marriott (29-27th 40th road) their Long Island City location.

When I arrived because of my previous enrollment at their other location, I was automatically accepted at the new location.

As part of being accepted into the program, I had to agree to certain terms and conditions and as long as I complied the contract stated I will be provided with housing and housing services and also Employment services.

Some of the terms and conditions were as follows: (1) While in the program I will seek or obtain employment. (2) I will not possess drugs while on the premises. (3) I will try to seek or obtain permanent housing through the program (via the 2010 E application). (4) I will consent to all searches (I think I'm not sure). (5) I will not engage in violent conduct while on the premises and other minor terms and conditions.

Following my acceptance in the program, I complied with its terms and conditions by doing the following: (1) I met with an on-site doctor for a physical and psych examination in order to meet with the requirements of the 2010 E application for housing. (2) I never used or possessed drugs or alcohol on the premises. (3) I frequently met with my caseworker and was referred to Exodus alternative to incarceration program (I never got a chance to fully take advantage of that program because I was unlawfully evicted). (4) I enrolled and attended Lincoln technical institute to become a BMW technician (I had to drop out due to being evicted) and (5) I was

working with a construction temp agency to obtain employment (when I received my first assignment to work, Exodus was attempting to kick me out, so I never got a chance to go to work). I also complied with searches to the best of my ability.

Between the dates of May 16 to May 22, 2021, I entered the Fairfield Inn and consented to be search (which consist of being wanded down for weapons, any personal property searched and any metal removed from the individual being searched pockets).

The security guard at the entrance proceeded to search me and even though I complied with the search procedure, he claimed I didn't fully empty my pockets (even though they were inside out).

He then called a caseworker (Miss Queen) over to remind me that I signed a contract that I will comply with the searches conducted at the program. Miss Queen said with an attitude, "Mr. Lurch you know what the contract say you better comply with the search" (she was mad at me from the previous day because she tried to flirt with me and I turned down her sexual advances) (she flirted by saying "you not going speak to me, you know you love me Mr. Lurch") (I just walked out the front door, my girlfriend was on the phone asking me who is speaking to me in that manner, so I disregarded her and explained to my current fiancée who she was).

In response to her telling me I better comply with the search, I tugged on my pockets that was inside out and told her I am. She then aggressively told me to empty my pockets, calmly and nonchalantly I stated "Bitch don't you see my pockets empty". She then said you called me a what, your out the program. I told her I didn't violate any term and condition in the contract, you can't kick me out for calling you a name you provoked me to call you, she said watch me and called the Police.

Subsequently, I was unlawfully seized and evicted after she got everyone to agree (including the head of administration of Exodus) to call the Police and convince them that I did something that

warranted removal (even though I wasn't in violation of any of the terms and conditions of the contract I signed). Which was a breach of the contract forced upon by Exodus and myself.

Parties Liable: ① Exodus transitional services

② Exodus staff

who called 911 and

assisted with un-

lawful eviction

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

- ① Loss of unrestricted movement ② Loss of Future potential earnings
- ③ mental anguish and emotional suffering ④ Humiliation
- ⑤ Denied right to pursue happiness ⑥ physical damage to personal belongings
- ⑦ Loss of housing ⑧ Sleep deprivation

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

IM Suing each individual defendant for \$2 million dollars in compensatory damages and \$2 million dollars in punitive damages. IM Suing each entity listed for \$2 million dollars in compensatory damages.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 9/7/2023

Signature of Plaintiff

Printed Name of Plaintiff



Robert Derek Lurch Jr.

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

bert Derek Lurch Jr.

cc #: 3102000365

RVC

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ast Elmhurst, NY

11370

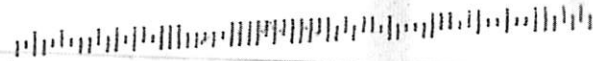
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